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91-1883

Supreme Court, U.S.
FILED
MAY 13 1992
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

No. _____

CARLOS PEREZ NARANJO,

PETITIONER

-VS-

PEOPLE OF THE STATE OF CALIFORNIA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

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NARANJO

QUESTION PRESENTED

Where the affidavit in support of a search warrant fails to request authority to search defendant's or any other vehicle and fails to provide any reason to believe any vehicles would contain contraband, can a warrant authorizing such a search be said to be supported by probable cause?

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Order of the Supreme Court of the State of California denying Petition for Review before that court. Mosk, J. is of the opinion the petition should be granted.

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Petitioner, CARLOS PEREZ NARANJO, requests a writ of certiorari be issued to review the judgment of the Court of Appeal of the State of California, Second Appellate District, Division Four, affirming the conviction and sentence in his case in order to review the question of whether a warrant which fails in its

entirety to request permission to search any vehicles related to a residence for which the warrant is sought or to set forth any facts upon which any vehicle can be identified as being related to that residence, can be upheld as being consistent with Constitutional principles.

OPINION BELOW

On November 19, 1991, the Court of Appeal of the State of California, Second Appellate District, Division Four, affirmed the defendant's conviction. (Appendix A) A petition for rehearing was denied by the same court on December 9, 1991. (Appendix B) On February 13, 1992, the Supreme Court of the State of California denied defendant's petition for review. Justice Mosk was of the opinion the petition should be granted. (Appendix C)

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 U.S.C. section 1257(3).

STATEMENT OF THE CASE

In an information filed by the District Attorney of Los Angeles County on December 6, 1989, petitioner, CARLOS PEREZ NARANJO, was charged with one count of

possession of marijuana for sale in violation of California Health & Safety Code section 11359. On March 27, 1990, petitioner's motion to suppress evidence pursuant to California Penal Code section 1538.5 was denied by the court. On April 19, 1990, petitioner entered a plea of guilty to Count I, possession of marijuana for sale as charged in the information. On June 12, 1990, petitioner was placed on probation for a period of three years on the condition he serve 180 days in the custody of the Los Angeles County Sheriff.

On November 19, 1990, in an opinion not certified for publication, petitioner's conviction was affirmed. His petition for rehearing was denied by the same court on December 9, 1991. On February 13, 1992, his petition for review before the California Supreme Court was denied. Justice Mosk was of the opinion

the petition should be granted.

STATEMENT OF FACTS

On October 23, 1989, Deputy Richard Garcia of the Los Angeles County Sheriff's Department was involved in surveillance of a residence at 10514 Freeman in the City of Los Angeles. This surveillance was pursuant to information received regarding possible narcotics activities at that address. A confidential informant had advised Garcia a male was selling marijuana from the rear of the residence. During the course of a 30 minute surveillance, Garcia and other officers observed approximately ten people walk to the rear of the residence and leave carrying small packages. A short time later, an automobile approached and parked. Garcia contacted the driver, Abendano Lopez, who was approaching the residence. He spoke briefly with Lopez. During this conversation, a male walked

out of the residence, looked at Garcia and walked back inside.

Based upon these observations, Garcia believed narcotics activity was taking place. When Garcia observed the man walk out, look at them, and then walk back in the house, he decided to walk to the residence and look inside. He observed three males standing inside the residence. On the sofa he saw what he believed to be a package of marijuana.

Garcia went to the front door and knocked. The door was opened by a male later identified as a Mr. Gyton. Garcia identified himself as a Los Angeles County Sheriff's Deputy, displayed his badge and walked inside the residence. He asked all people inside the house to step outside. Garcia picked up the rectangular object which he had seen on the sofa and found it to contain a green leafy substance which

he believed to be marijuana. Petitioner, Carlos Perez Naranjo, was present inside the residence.

Based upon these observations, the residence was "secured" and a search warrant obtained. A further search of the residence pursuant to that warrant uncovered other packages of marijuana contained within a large trash bag. An additional five packages were found in a chest of drawers in another part of the residence. Deputy Garcia was able to determine that a male and female who arrived at the residence later, Mr. and Mrs. Salinas, were the occupants of the residence. The officers determined petitioner, Carlos Perez Naranjo, to be a visitor.

After a search of the residence was conducted, petitioner's vehicle, a brown Ford Thunderbird parked on a nearby street, was searched and one package of

marijuana was found in the trunk.

ARGUMENT

WHERE THE AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT FAILS TO REQUEST PERMISSION TO SEARCH ANY VEHICLES OR TO IDENTIFY THOSE VEHICLES AND THEIR RELATIONSHIP TO THE PURPOSE FOR WHICH THE WARRANT IS SOUGHT, CAN A SEARCH OF THOSE VEHICLES PURSUANT TO THE WARRANT AUTHORIZING SUCH SEARCH ON ITS FACE BE UPHELD.

The trial judge concluded the affidavit in fact failed to make any mention of automobiles or request for permission to search any vehicle. Nonetheless, the face of the warrant authorized search of vehicles "related to the residence". The trial court found that while the warrant lacked probable cause to justify a search of the vehicle, it was nonetheless finding the officers acted in good faith within the meaning of United States v. Leon (1984) 468 U.S. 897. Throughout the course of proceedings, no party has disputed the affidavit failed to

describe any vehicle or request permission to search any vehicle.

It is well established in the Fourth Amendment to the United States Constitution that a warrant may not issue except on probable cause supported by oath or affirmation particularly describing the place to be searched and the persons and things to be seized. United States Constitution, Fourth Amendment; Maryland v. Garrison 480 U.S. 79, 84, 94 L.Ed.2d 72, 107 S.Ct. 1013 (1987); United States v. Spilotro 800 F.2d 959, 963 (9th Cir. 1986). This rule is designed to prevent general, exploratory searches which unreasonably interfere with a person's right to privacy. The warrant in petitioner's case permitted the seizure of items for which no probable cause was demonstrated in the affidavit. There is no indication in the affidavit a vehicle under his control even existed, nor was

there any indication of narcotics involvement on his part to an extent which would warrant the officer's belief contraband would be found in his vehicle.

For purposes of issuing a search warrant, the standard of probable cause is whether the affidavit states facts that make it substantially probable that there is specific property lawfully subject to seizure presently located in the particular place for which the warrant is sought. The task of the issuing magistrate is to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is fair probability that contraband or evidence of a crime will be found in a particular place. Illinois v. Gates (1983) 462 U.S.

213, 238. The magistrate must consider information provided in the affidavit before allowing a search warrant to issue. The magistrate must, therefore, be presented adequate facts in the affidavit to establish probable cause.

In petitioner's case, all parties conceded the affidavit provided no facts or information about the existence of any vehicles related to the residence or any reason to believe any vehicles, had they been noted, would contain contraband. The California Court of Appeal effectively has ruled that, contrary to well-established authority of this Court, an applicant for a search warrant need not set forth in the affidavit facts supporting the search of that particular place if examination of other evidence not presented to the magistrate provides what the court feels constitutes probable cause. This is not a decision based on well-established

principles. The fact the officers had seen other males walk to the residence and then leave carrying an object in a plastic bag and that some of those males left in automobiles does not establish probable cause. The affidavit provided no information showing Mr. Perez owned or arrived in a vehicle or was seen to carry items to or from a vehicle.

The warrant authorizing search of vehicles associated with the residence when no such request was made in the affidavit is not based on probable cause and should not be upheld.

CONCLUSION

In that the warrant issued and authorized the search of vehicles not identified in the affidavit, petitioner requests this Court issue a writ of certiorari and decide the question, or in the alternative, remand the case to the California Courts for reconsideration.

DATED: 24 April 1992

PATRICK J. HENNESSEY, JR.
Attorney for Petitioner,
Carlos Perez Naranjo

NOT TO BE PUBLISHED

COURT OF APPEAL

SECOND APPELLATE DISTRICT

DIVISION FOUR

STATE OF CALIFORNIA

THE PEOPLE,	)	FILED:
	)	
Plaintiff and Respondent,	)	NOV. 19, 1991
	)	
v.	)	
	)	
CARLOS PEREZ NARANJO,	)	No. B051422
	)	
Defendant and Appellant.	)	Super.Ct.No.
	)	YA 001630

APPEAL from a judgment of the Superior Court of Los Angeles County, Cecil J. Mills, Judge. Affirmed.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Carol Wendelin Pollack,

Acting Assistant Attorney General, and Richard L. Walker, Deputy Attorney General, for Plaintiff and Respondent.

Carlos Perez Naranjo appeals from the judgment entered (order granting probation) following the denial of his motion to suppress evidence pursuant to Penal Code section 1538.5 and his plea of guilty to one count of possession of marijuana for sale (Health & Saf. Code, sec. 11359). Appellant contends the trial court incorrectly denied his motion to suppress evidence.

STATEMENT OF FACTS[1]

The record of the motion to suppress evidence establishes that a search warrant was issued on October 23, 1989, to search "the location to the rear of 10514 Freeman Ave., County of Los Angeles, described as

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1 The motion to suppress evidence pursuant to Penal Code section 1538.5 was submitted on the transcript of the preliminary hearing.

a yellow stucco building with white trim and a brown roof, & all rooms, attics, containers, closets, garages, and persons at the location and veh. associated with the location." The search warrant authorized a search for, among other things, marijuana and narcotic paraphernalia.

The affidavit in support of the search warrant established, in relevant part, that on October 23, 1989, Deputy Sheriff Richard Garcia was contacted by a confidential informant who stated that a male was selling marijuana from his residence located at the rear of 10514 Freeman Avenue. The confidential informant stated that he/she had been inside the location over the past two weeks and that each time he/she had seen large quantities of marijuana. The informant stated further that on both

occasions he/she observed the male sell the marijuana or trade it for what the informant believed to be stolen property. At approximately 12 noon on October 23, 1989, Garcia conducted a surveillance at the location for approximately 30 minutes. During that time, he observed 10 males walk up to the residence. None of them stayed longer than two minutes and each of them left the location carrying an unknown object in a plastic bag. One of the men approached the residence carrying what appeared to be a VCR. During the surveillance, Garcia observed a car park in front of the location. Believing the occupants were now aware of the officers' presence and they would possibly destroy or conceal contraband, Garcia approached the location. Upon looking through a large sliding window, Garcia observed three men inside. On a couch, Garcia observed a large rectangular object

wrapped in tape. Garcia recognized this as a common means of packaging narcotics. Garcia knocked on the front door, identified himself as a deputy sheriff and requested the men to exit the location until a search warrant was obtained. Prior to leaving the location, Garcia retrieved the object on the couch and observed it to contain a large amount of a green leafy material resembling marijuana.

Thereafter, pursuant to the warrant, Garcia and Deputy Dendo entered the location and conducted a search of the interior. Garcia found a large dark color plastic bag, "like a 50 gallon trash bag" containing nine similar type taped packages, each containing a green leafy substance resembling marijuana. An additional five similar packages containing a green leafy substance resembling marijuana were recovered from a

chest of drawers situated next to the front door. Two additional packages were recovered from two separate vehicles. One of the vehicles belonged to codefendant Salinas and the other vehicle belonged to appellant. Garcia also found a scale, a gun that had been reported stolen from the Azusa Police Department, a VCR and some electrical equiment and two beepers.

As Garcia was serving the warrant, codefendant Salinas walked up and stated he lived at the location. Appellant state he (appellant) did not live at the location but was only visiting and waiting for a friend. Appellant gave the deputies the keys to his car so they could search the trunk.

DISCUSSION

Appellant contends the trial court incorrectly denied appellant's motion to suppress evidence. Appellant contends the warrant did not authorize a search of his

vehicle and if it did, the warrant was totally unsupported by probable cause. Appellant's contention is without merit.

"The standard by which a magistrate must determine whether an affidavit is sufficient to establish probable cause for issuance of a search warrant is explained in Illinois v. Gates (1983) 462 U.S. 213, 238-239 [76 L.ed.2d 527, 548, 103 S.Ct. 2317]: 'The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of the reviewing court is simply to ensure that the magistrate had a "substantial

basis for ... conclud[ing]" that probable cause existed.' .... [paragraph] 'The process [of determining probable cause] does not deal with hard certainties, but with probabilities." (People v. McNabb (1991) 228 Cal.App.3d 462, 468.) "It is not essential that there be direct evidence that such evidence will be at a particular location. Rather, the magistrate is entitled to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense. [United States v. Fannin (9th Cir. 1987) 817 F.2d 1379, 1381-1382.]" (People v. Sandlin (1991) 230 Cal.App.3d 1310, 1315, internal quotation marks omitted.)

Applying this standard, we conclude that the magistrate had a substantial basis for concluding that marijuana and narcotic paraphernalia would be found in vehicles associated with the location to

be searched.[2] Because large quantities of marijuana were at the residence, numerous persons were seen buying marijuana at the location, and one apparently potential buyer was seen driving up to the location, the magistrate could have reasonably concluded that automobiles were used to

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2 In denying the motion to suppress, the superior court judge concluded that the affidavit for issuance of the search warrant was lacking in probable cause, but that the officer executed the warrant in good faith, and thus the evidence was admissible under United States v. Leon (1984) 468 U.S. 897. At oral argument, appellant argued that the recent decision of the California Supreme Court, People v. Camarella (1991) 54 Cal.3d 592, compels reversal in this case. Because we conclude that the search warrant affidavit did in fact establish probable cause for issuance of the warrant, we need not address this argument. A correct result will be upheld, even if the lower court may have relied on an incorrect reason. (Green v. Superior Court (1985) 40 Cal.3d 126, 138.)

transport the marijuana and paraphernalia and could have reasonably inferred that marijuana would likely be in the automobiles of these purchasers and sellers. (See People v. McNabb, *supra*, 228 Cal.App.3d at p. 469.)

Additionally, the warrant's description of "veh. associated with the location" was sufficient. The officers conducting the search could, with reasonable effort, identify the specific vehicles in which there was probable cause to believe contraband would be found. (See People v. Fitzwater (1968) 260 Cal.App.2d 478, 486-488.)

Appellant next contends that he was only a visitor at the location and his extended detention and search of his vehicle was illegal. Appellant's contention is without merit. Appellant's presence at the location and "hasty retreat upon seeing the officers" was

sufficient connection with the location to give him the status of occupant and to allow the officers to believe that appellant was connected with the premises. Appellant's actions established "his direct association with the premises and gave {appellant} the status of 'occupant' under the rule set forth in Michigan v. Summers; '[t]he connection of an occupant to that home gives the police officer an easily identifiable and certain basis for determining that suspicion of criminal activity justifies a detention of that occupant.' [Citation.]" (People v. Huerta (1990) 218 Cal.App.3d 744, 749.)[3]

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3 By order of the Supreme Court, dated February 21, 1991, People v. Smith (F012101), which appellant claims distinguished People v. Huerta, supra, 218 Cal.App.3d 744, was ordered depublished.

DISPOSITION

The judgment (order granting probation) is affirmed.

NOT TO BE PUBLISHED.

/s/
COOPER, J.

We Condur:

WOODS (Arleigh), P.J.

EPSTEIN, J.

OFFICE OF THE CLERK

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

ROBERT N. WILSON, CLERK

DIVISION: 4 DATE: 12/09/91

Patrick J. Hennessey
2356 Moore Street
Suite 201
San Diego, CA 92110

RE: People of the State of California
vs.
Naranjo, Carlos Perez
2 Criminal B051422
Los Angeles No. YA001630

THE COURT:

Petition for rehearing denied.

EXHIBIT "B"

Second Appellate District,
Division Four, No. B051422
S024379

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA
IN BANK

THE PEOPLE, Respondent

V.

CARLOS PEREZ NARANJO, Appellant

Appellant's petition for review DENIED.

Mosk, J. is of the opinion the petition should be granted.

\s\ LUCAS

Chief Justice

SUPREME COURT
FILED FEB. 13, 1992
Robert Wandruff Clerk
Deputy

EXHIBIT "C"